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Summary of Enforcement Accomplishments

Fiscal Year 1987

SUMMARY OF ENFORCEMENT ACCOMPLISHMENTS

Fiscal Year 1987

Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
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FOREWORD/ACKNOWLEDGEMENT

The purpose of this report is to summarize the combined enforcement and compliance accomplishments of EPA, the Regions and the States in Fiscal Year 1987. This report was prepared by the Office of Enforcement and Compliance Monitoring (OECM) and is based on information and data from various EPA enforcement offices and data management systems. The principal author of the report was Robert G. Banks, Jr. of the Compliance Evaluation Branch of OECM. We would like to thank each of the Regional Offices and Program Offices for their valuable contributions which aided in the production of this report.

SUMMARY OF ENFORCEMENT ACCOMPLISHMENTS REPORT

EXECUTIVE SUMMARY

In Fiscal Year 1987, EPA and the States achieved record levels of environmental enforcement, using the full range of enforcement authorities. The Agency referred 304 civil cases to the Department of Justice, which is the second highest number of civil referrals from EPA to DOJ. The DOJ filed 285 cases in FY 1987, compared to 260 last year. State agencies referred 723 cases to their Offices of State Attorneys General or State attorneys for prosecution, nearly twice the number of referrals from the previous year. EPA and the States also carried out a strong administrative program with EPA and the States each issuing over 3,000 administrative orders. The Agency established an all-time record for the largest amount of civil penalties imposed in a year. EPA imposed over $24 million in penalties. The criminal enforcement program referred 41 cases for criminal prosecution, which was one of the highest numbers of criminal referrals in the program's history. In FY 1987, EPA also increased its use of the contractor listing sanctions under the Clean Air and Clean Water Acts.

During FY 1987, EPA continued to enhance and reinforce the foundation for the State/EPA enforcement relationships by revising the Policy Framework for State/EPA Enforcement Agreements and by continuing to evaluate the State/EPA implementation of the timely and appropriate response guidance. EPA and State timely and appropriate enforcement response helps assure that enforcement actions are taken quickly once a violation is discovered and that the penalty fits the seriousness of the violation. EPA and the States have improved timeliness in responding to significant violations over the last several years. In FY 1987, the Agency created a work group on Inspector Training and Development to develop an inspector training program. EPA continued to work closely with the National Association of Attorneys General (NAAG) to increase the awareness by Attorneys General of environmental enforcement issues. As part of an effort to exchange and disseminate information on environmental enforcement, EPA funds and contributes information to the National Environmental Enforcement Journal.

Numerous strategies, guidance and initiatives were developed or improved upon in FY 1987. These include the National Municipal Policy, which had a primary goal in FY 1987 of assuring successful implementation of the policy by the July 1988 deadline. The RCRA Enforcement Response Policy was revised during FY 1987. The policy provided a general framework identifying violations and violators of concern and describing timely and appropriate enforcement response to noncompliance. The Agency also issued a lead banking penalty policy that dealt with the potential profits that could

be gained by creating and trading unlawful lead rights. Several other strategies, guidance and intiatives were developed during the year and are detailed later in this summary.

Major enforcement civil, criminal and administrative cases were concluded in FY 1987. Following is a partial list of key legal, program and regional precedents established in FY 1987:

- The largest Clean Air Act penalty in Region I was collected;
- Region IX referred its first civil suit of a Public Water Supply System under the SDWA;
- The first multi-party de minimus cash-out settlement in the country was reached;
- The first administrative cost recovery case was settled;
- The first judicially-approved mixed-funding consent decree was filed;
- The first judicial interpretation of SARA's broadened access authority was obtained;
- The Agency received one of the largest civil penalties paid for PMN violations;
- The first EPA case to criminally convict for violations of CWA pretreatment requirements was successfully tried;
- The highest prison term yet in an EPA case was handed down; and,
- The Agency received the first judicial opinion upholding "record review" under SARA.

During FY 1987, EPA and the States maintained high levels of enforcement actions in specific media programs. Program offices continued to focus on high priority areas while maintaining an overall enforcement presence in all regulated areas. Progress in addressing significant violators continued to improve in most programs.

I. RECORD LEVELS OF NATIONAL ENVIRONMENTAL ENFORCEMENT ACTIVITY

National and State Enforcement Activity

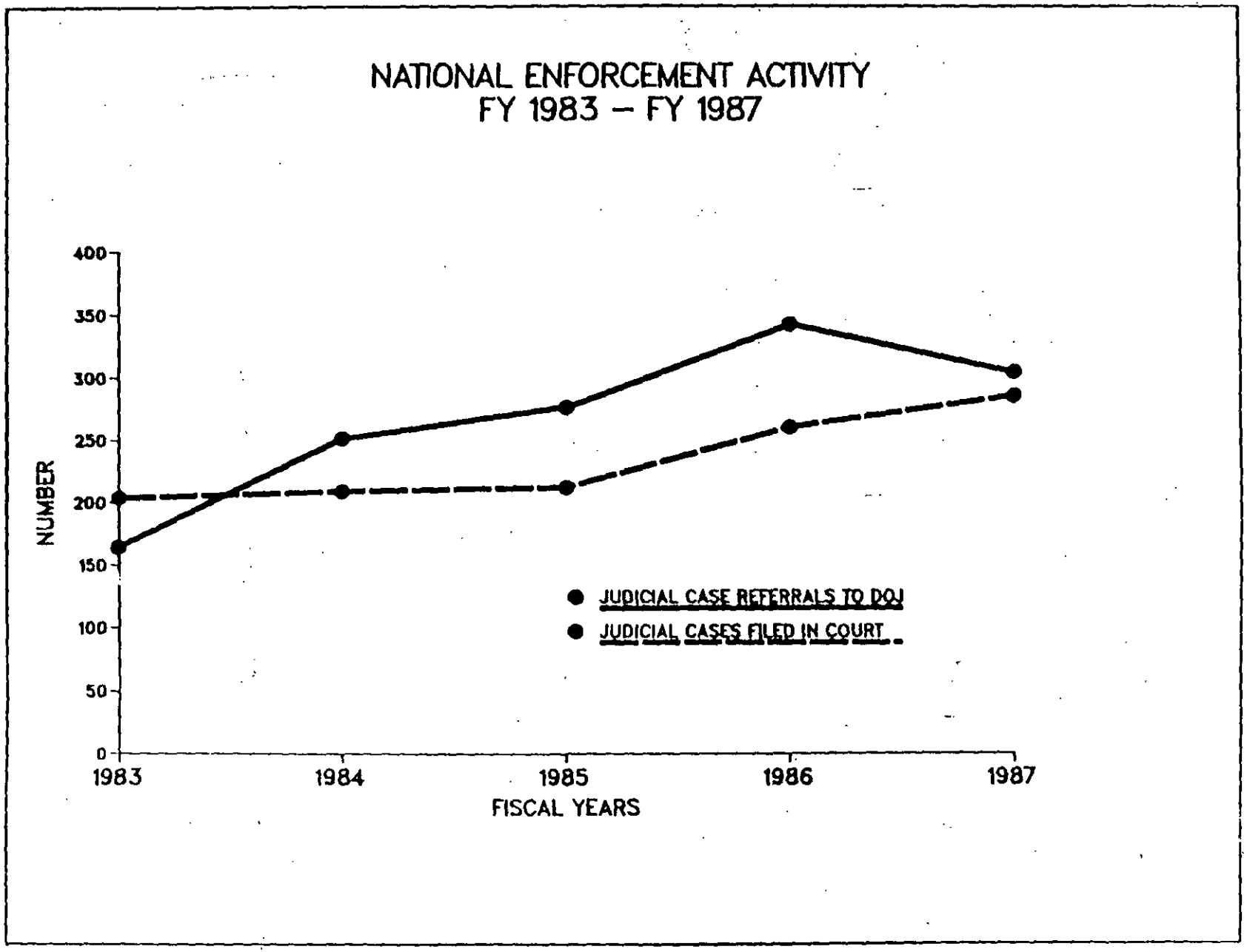
In FY 1987, EPA and the States achieved another record setting year in environmental enforcement activity. The Agency referred the second highest number of enforcement cases in its history to the U.S. Department of Justice and set an all-time dollar record for the total amount of civil penalties assessed. EPA also expanded its administrative penalty and contractor listing programs while maintaining and resolving a large civil and criminal judicial case docket. In addition, state agencies developed and referred their highest number of civil cases to state courts and maintained strong administrative enforcement programs.

State environmental agencies, which now enforce most of the federal environmental laws under authority delegated by EPA, referred 723 cases to State Attorneys General for prosecution under state law, compared with 408 in the previous year. In addition, the States took a total of 3,183 administrative enforcement actions under the air, water and hazardous-waste laws, compared with 4,106 in FY 1986.

EPA referred 304 civil and 41 criminal cases to the Justice Department, compared with 342 and 41 in those categories in FY 1986 (see chart on following page). The Justice Department filed 285 EPA civil cases in FY 1987, compared with 260 cases last year. At the end of FY 1987, EPA had 387 active civil judicial orders and consent decrees, compared with 322 in FY 1986 and 282 in FY 1985.

EPA issued 3,194 administrative orders in FY 1987 compared with 2,626 in 1986 and 2,609 in FY 1985 (see chart). The largest increase in administrative orders -- from 781 in FY 1986 to 1,051 in FY 1987 -- occurred under the Toxic Substances Control Act, primarily in the PCB and asbestos programs.

The Agency established a new all-time record for the largest amount of civil penalties imposed in a year. EPA imposed over $24 million in penalties in FY 1987 compared with $20.9 million in 1986, and $22.9 million in FY 1985. The penalties imposed in these three years account for 60 percent of


NATIONAL ENFORCEMENT ACTIVITY
FY 1983 – FY 1987
NUMBER
400
350
300
250
200
150
100
50
0
1983
1984
1985
1986
1987
FISCAL YEARS
JUDICIAL CASE REFERRALS TO DOJ
JUDICIAL CASES FILED IN COURT

EPA ENFORCEMENT ACTIVITY
ADMINISTRATIVE ORDERS
FY 1980 THROUGH FY 1987

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987
Air - Stationary	86	112	21	41	141	122	143	191
Water - NPDES	569	562	329	781	1644	1028	990	1002
Safe Drinking Water	*	*	*	*	0	3	0	212
RCRA	-	159	237	436	554	327	235	243
Superfund	-	-	-	-	137	160	139	135
TSCA	70	120	101	294	376	733	781	1051
FIFRA	176	154	176	296	272	236	338	360
Total	901	1107	864	1848	3124	2609	2626	3194

*NPDES and SDWA orders combined

(CAPO 1/15/88)

EPA ENFORCEMENT ACTIVITY
CIVIL CASES REFERRED BY EPA TO DOJ
FY 1980 THROUGH FY 1987

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987
Air - Stationary	80	52	31	60	66	86	109	100
Water - NPDES	56	37	45	56	95	88	108	85
Safe Drinking Water	*	*	*	*	*	5	11	7
RCRA	53	14	29	33	60	13	43	23
Superfund	**	**	**	**	**	35	41	54
TSCA	1	1	2	7	14	8	10	9
FIFRA	***	***	***	***	***	11	14	4
Air - Mobile Sources	20	14	5	9	16	30	6	22
Total	210	118	112	165	251	276	342	304

* NPDES and SDWA cases combined
** RCRA and Superfund cases combined
*** FIFRA and TSCA cases combined

(CAPO 1/15/88)

all of EPA's penalties imposed since 1974. EPA program offices generally have increased their use of penalties and the size of typical penalties under both judicial and administrative authorities.

EPA's criminal enforcement program has referred 82 cases for criminal prosecution over the past two years. In 1987, 58 defendants were convicted or entered guilty pleas, compared with 66 in 1986 and 40 in 1985. During 1987, federal judges imposed fines totalling $3.6 million and prison terms of 84 years against individuals convicted of violations of federal environmental laws.

EPA also is increasing its use of the contractor listing sanctions under the Clean Air and Clean Water Acts. As of September 30, 12 facilities were on EPA's "List of Violating Facilities." Facilities automatically go on the list when their owners or operators have been convicted of criminal violations of the clean air and clean water laws (or which have had continuous or recurring violations of those laws) or may be added at EPA's discretion if there is a continuous pattern of violation of these statutory requirements. Listed facilities are barred from receiving future contracts, grants, loans or any other form of assistance from any branch of the federal government. A facility remains on the list until it demonstrates that it has corrected the condition that gave rise to the listing.

II. A STABLE AND CONSISTENT NATIONAL ENFORCEMENT PROGRAM

Updating State/EPA Enforcement Agreements

During FY 1987, EPA continued to enhance and reinforce the foundation for the State/EPA enforcement relationship carefully established over the past four years. The Policy Framework for State/EPA Enforcement Agreements, originally issued in FY 1984, and the corresponding program specific implementing guidance, serves as the blueprint for the State/EPA enforcement agreements. These agreements spell out criteria for good performance, state-federal roles and relationships and national reporting of accomplishments. EPA revised the Policy Framework in August of 1986, with the assistance of the Steering Committee on the State/Federal Enforcement Relationship, to incorporate new policy and integrate all related guidance developed since its issuance. This included oversight

of state civil penalties, guidance for timely and appropriate enforcement response, involvement of the State agency attorneys and Attorneys General and sharing of penalties. The revisions were reinforced in the guidance issued this fiscal year for the FY 1988 enforcement agreements process.

Evaluating State/EPA Implementation of Timely and Appropriate Enforcement Response Guidance

The Steering Committee on the State/Federal Enforcement Relationship continues to monitor implementation of the Policy Framework. A report on implementation of the timely and appropriate enforcement response guidance for the RCRA, NPDES, Air, TSCA, FIFRA, PWSS, and UIC programs addressed the extent to which both EPA and States are meeting the timeframes for enforcement response as established by each program. The report shows that EPA and States have made improvements in implementing the timely and appropriate enforcement response system and that the guidelines are generally having a favorable impact.

- There are two notable improvements in timeliness of enforcement actions. When compared to FY 1986 performance, States in the RCRA program had a six percent increase in timeliness; EPA in the Air program had an eleven percent increase in timeliness.

- Overall, program timeliness is slightly better than the FY 1986 results and State and EPA performance in meeting the timeframes is fairly comparable. Much more needs to be done to improve timeliness of response and continuing to assess how realistic the goals are.

- States made a substantial improvement in assessing penalties in enforcement actions when compared to FY 1986. The most dramatic change is in the Air program, where States increased the percentage of enforcement actions with penalty from 62% to 92%. In RCRA, States increased the percentage of cases in which penalties are assessed in formal enforcement actions from 34% to 41%, however, there is still a significant difference in the extent to which States and EPA use penalties and sanctions in RCRA enforcement actions.

The trends are promising. Formal enforcement response by States has been increasing over the past few years in both absolute numbers and the proportion of total EPA and State actions as is the appropriate use of penalties or other sanctions. Efforts to further improve both State and federal performance in meeting T&A goals will be undertaken over the next fiscal year.

Supporting Inspector Training and Development

The Agency-wide Work Group on Inspector Training and Development was organized in FY 1987 to create an inspector training program. As part of this project, Region II, organized the Agency's first profile of Agency personnel performing compliance inspections and field investigations. Each compliance program worked with its Regional and State counterparts to develop curricula. The Office of Enforcement and Compliance Monitoring began developing a cross-cutting basic inspector training course to teach the fundamentals of inspections to all agency compliance inspections and field investigations personnel. The Office of Enforcement and Compliance Monitoring assembled necessary materials for the Basic Curriculum in five areas; legal, administrative, technical, communication and health and safety. The Office of Administration and Resources Management led an analysis of the compliance inspection job, focusing on knowledge, skills and abilities to be developed through training. The Work Group reviewed a draft policy statement and guidance on program implementation. Subsequently, an EPA Order was drafted that would establish the training program. Work is continuing in FY 1988 to polish the EPA Order and Program description for Agency-wide review and approval. The program will also emphasize the importance of assessing State training needs and providing assistance to states in meeting those needs.

Improved Coordination Between State Attorney General, EPA and DOJ

EPA continued to work closely with the National Association of Attorneys General to increase the awareness by Attorneys General for environmental enforcement issues. As part of an effort to exchange and disseminate information on environmental enforcement, EPA has continued to fund and contribute feature articles, major case decisions and settlements, indictments, federal enforcement policy, etc. to the National Environmental Enforcement Journal. The Journal is distributed within EPA and to DOJ, the U.S. Attorneys, State Attorneys

General, State regulatory agencies and is an important tool in developing stronger and more coordinated environmental enforcement efforts. With EPA assistance, NAAG has conducted a series of training sessions and roundtable discussions on such topics as hazardous waste enforcement and managing complex environmental litigation.

EPA also continues to work with the National Environmental Enforcement Council (NEEC) to exchange views about issues on environmental laws and policy among law enforcement officials from EPA, DOJ, U.S. Attorneys, State Attorneys General, District Attorneys, and State Environmental Program Directors. EPA speakers discuss relevant environmental enforcement topics with NEEC. The Assistant Administrator for OECM was the Vice-Chair for 1987 and will be the Chair for 1988.

III. STRATEGIES, GUIDANCE AND INITIATIVES FOR COMPLIANCE AND ENFORCEMENT

Fiscal Year 1987 was a year in which the Agency continued the strategic planning process for refining and improving compliance and enforcement strategies and programs that is now an integral part of the Agency's overall Strategic Planning and Management System (SPMS). The process is designed to promote strategic thinking and focus on addressing emerging problems in the compliance and enforcement programs through joint discussions at the beginning of the planning cycle.

Written strategies and guidance for compliance and enforcement especially for new programs, serve as important communications tools and frameworks for program operations. Highlighted below are several example accomplishments for improved strategies and guidance in FY 1987.

Small VOC Source Compliance Strategy

In July 1987, the Office of Air and Radiation issued the Agency's small VOC source compliance strategy. The strategy provides a process for identifying VOC categories that are dominated by small sources who are important contributors to ozone non-attainment for specific areas. The strategy creatively links three components of a compliance approach for addressing small VOC sources, i.e., compliance promotion through publicity and technical assistance, statistical targetting of inspections, and swift enforcement.

Lead Banking Penalty Policy

The regulatory changes that allowed refiners to bank lead rights created the need for a new penalty policy that could deal with the potential profits that could be gained by creating and trading unlawful lead rights. Such a policy was developed in FY 1987 and resulted in the issuance of several multi-million dollar notices of violation for lead phasedown violations.

Despite vehement industry opposition to the higher banking penalties, the majority of these cases have already been resolved. Settlements have typically involved payment of substantial penalties plus the elimination of large quantities of lead from the lead pool. Millions of grams of lead that otherwise would have been used in gasoline production have been eliminated as a result of these settlements.

National Municipal Policy (NMP)

The primary NMP goal during FY 1987 was to assure successful implementation of the Policy by the July 1988 deadline. It was critical that the Agency demonstrate that it was serious in enforcing against violations of established schedules, other noncompliance with the Policy's objectives and Clean Water Act requirements for municipals. Following an EPA audit of State and Regional actions in the Spring, and bolstered by schedule violation data collected in a survey performed by ASIWPCA, OWEP prepared an Enforcement Strategy directed at the worst cases. The heart of the Strategy is a list of candidates for referral, including Federal overfile actions. Based on the trends evident in the EPA and ASIWPCA surveys, the Administrator sent a directive to the Regional Administrators, requesting that they work directly with their States to carry out the Policy during this "final push" to July 1, 1988. Since the NMP Enforcement Strategy took effect in September, over 100 major POTWs have been targeted for EPA or State action. During FY 1987, the number of NMP majors not under enforceable schedules was reduced from 63 to 23 (over 1,500 originally required schedules under the NMP). The number of majors that had achieved compliance rose by 234 to 503. Thirty-seven NMP majors were referred to DOJ and 36 were referred to State Attorneys General. Forty-six State and EPA NMP cases (some referred before FY 1987) were settled in FY 1987, placing these POTWs on judicial schedules.

Clean Water Act Amendments-Authority to Assess Administrative Penalties

Section 314 of PL 100-4 (Section 309(g)-CWA), effective February 4, 1987 added a new subsection (g) to section 309 of the Clean Water Act which authorizes the Administrator or his delegatees to assess administrative penalties for violation of National Pollutant Discharge Elimination System (NPDES) requirements, (including violations of NPDES permits and discharging without an NPDES permit) and for discharges without a dredge and fill permit required under Clean Water Act §404. The new statute provides for assessment of Class I and Class II penalties in maximum amounts of $25,000 and $125,000. Immediately following the passage of PL 100-4 a joint Office of Water-OECM work group was formed to develop procedures, policy and guidance for implementation of this new authority. This work group included representation from all the Regions. By the end of August, 1987, procedures for Class I and Class II proceedings had been formulated and announced in the Federal Register, Interim Delegations of the Administrator's authority had been issued and a guidance package including various forms and explanatory guidance concerning the operations of Section 309(g), was transmitted to all Regions. Additional Section 404 guidance, which requires coordination with the Corps of Engineers is proceeding, and work towards the final promulgation of procedural hearing rules for both classes of penalties and of final delegations is also going forward.

Reportable Noncompliance for POTW Pretreatment Program Implementation

On September 30, 1987, the Office of Water Enforcement and Permits (OWEP) issued "Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements." The Guidance provides the basis for evaluating the compliance status of a POTW which must implement an approved pretreatment program. POTWs that meet the criteria for failing to implement their approved pretreatment program are considered in "Reportable Noncompliance" (RNC) and must be listed by EPA and approved States on the Quarterly Noncompliance Report. The criteria cover principal POTW activities including the issuance of Industrial User (IU) control mechanisms; compliance monitoring and inspections of IUs; enforcement of pretreatment standards; and reporting to the Approval Authority. During FY 1988, Regions and States will use this guidance to identify POTWs that are failing to implement their approved programs and

report them on the QNCR. These facilities will be priorities for enforcement, for permit modifications, or for technical assistance, where appropriate. The effectiveness of this Guidance in identifying the most serious noncompliers will be evaluated during FY 1988, and, with appropriate revisions, will become the basis for a definition of significant noncompliance for pretreatment implementation in the future.

Analysis of State Administrative Mechanisms for Enforcement

In FY 1987, a major project was initiated to analyze State administrative mechanisms for enforcement to assure that those counted as "equivalent" to Federal Clean Water Act administrative compliance orders for reporting in Quarterly Noncompliance Reports and other Agency tracking and reporting systems (SPMS/OWEP) also met the Agency's definition of formal enforcement actions. OWEP, in conjunction with OECM-Water, developed the specific criteria. Regional program and counsel staff used these criteria to review and evaluate the State administrative enforcement documents and their statutory and regulatory bases. The Regional analyses were completed in March 1987. Only one State was found to lack any equivalent mechanism and this is presently being remedied.

Pretreatment Permits and Enforcement Tracking System (PPETS)

In response to requests by the Regions and States, OWEP worked with the Regions and States during FY 1987 to develop an automated tracking system for overseeing the implementation of the pretreatment program. This system, which is a subset of the NPDES data system, PCS, is known as the Pretreatment Permits and Enforcement Tracking System (PPETS), became operational on November 10, 1987. The system consists of a small set of required information collected from existing pretreatment data sources, and also has the capability to allow for the entry of a broad range of optional information. PPETS is expected to:

- o identify national problem areas in implementation of the pretreatment program;
- o provide data on significant industrial users;
- o provide a basis for assessment of the national program's progress and success; and
- o provide data for assessing POTW implementation in terms of reportable noncompliance.

Effective January 4, 1988, the Regions and States are required to begin data entry of the mandatory PPETS information for all pretreatment data collected after September 30, 1987.

Enforcement Response Policy

The RCRA Enforcement Response Policy (ERP) was revised during fiscal year 1987. Originally issued in December 1984, the ERP provides a general framework identifying violations and violators of concern and describing timely and appropriate enforcement response to noncompliance. The changes were made to reflect changes in the program and the regulated universe. Since the development of the original ERP, which placed priority on enforcement against interim status land disposal facilities which were out of compliance with groundwater monitoring, closure/post-closure, or financial responsibility requirements, new program initiatives have developed. HSWA and overall development of the RCRA program have mandated closer scrutiny of other segments of the regulated community and other types of violations. This expansion of focus required a broadening of programmatic emphasis. For example, corrective action requirements and land disposal restrictions direct more attention to hazardous waste treaters, storers, and generators, as well as to land disposal facilities.

The Environmental Priorities Initiative

The Environmental Priorities Initiative (EPI) is an integrated RCRA/CERCLA Management System designed to enable the Agency, and ultimately the States, to identify, evaluate, rank and clean up first those sites that present or may present the greatest threat to human health and the environment.

Off-Site Policy

The Off-Site Policy describes procedures that should be observed when a response action under CERCLA or Section 7003 of RCRA involves off-site treatment, storage or disposal of CERCLA waste. The procedures also apply to actions taken jointly under CERCLA and another statute. The purpose of the Off-Site Policy is to avoid having CERCLA wastes contribute to present or future environmental problems by directing these wastes to facilities determined to be environmentally sound.

Interim Guidance: Streamlining the CERCLA Settlement Decision Process

This guidance deals with ways to improve the negotiation and settlement process, focusing on three areas:

- Negotiation preparation
- Management review of settlement decisions
- Deadline management

Entry and Continued Access Under CERCLA

In June 1987, OECM issued guidance that set forth the Agency's policy on gaining entry and continued access to hazardous waste sites. The guidance discusses changes to the Agency's access authority brought about by SARA, and describes the use of consent, administrative orders, warrants, and court orders to facilitate access.

Interim Guidance on Settlements with De Minimis Waste Contributors Under Section 122(g) of SARA

In June 1987, OECM and OSWER issued guidance that examined which contributors of hazardous waste qualify for de minimis treatment under CERCLA and provides direction on the form and timing of settlement with such parties.

Covenants Not To Sue Under SARA

In July 1987, OECM, OSWER and DOJ issued guidance that provides information on implementing the mandatory and discretionary provisions of SARA relating to the use of releases from liability, or "covenants not to sue," in CERCLA consent decrees.

Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees

This guidance issued in September by OECM, provides direction on how to structure the stipulated penalties provision in consent decrees.

Guidance on Federal Superfund Liens

This guidance issued by OECM in September 1987, implements the new lien authority created by SARA. The document discusses when liens should be issued and what they should contain.

Final RCRA Comprehensive Ground-Water Monitoring Evaluation Guidance

In December, 1986, OSWER issued guidance which provides a framework for evaluating inspections/evaluations of groundwater monitoring systems under RCRA.

RCRA Corrective Action Interim Measures Guidance

In June 1987, OSWER issued guidance intended to assist the Regions in determining the need for an interim measure and directing the work which must be performed as part of the corrective action program to mitigate or remove the exposive threat presented by release.

RCRA Corrective Action Plan

In November 1986, OSWER issued a plan to aid the Regions and States in determining and directing the specific work which must be performed as part of a complete corrective action program. It provided a technical framework for use during the development of Corrective Action Orders and corrective action permit requirements.

Waste Oil Interim Enforcement Guidance

This guidance provides information to the Regions about the technology of the waste oil industry as well as strategies for enforcement.

RCRA Groundwater Monitoring Technical Enforcement Guidance

This guidance describes in detail what EPA deems to be the essential components of a ground-water monitoring system that meets the goals of the Resource Conservation and Recovery Act. The guidance is to be used by enforcement officials, permit writers, field inspectors and attorneys at the federal and state levels to assist them in making informed decisions regarding the adequacy of existing or proposed ground-water monitoring systems or modifications thereto.

Criminal Press Policy

This policy, issued jointly with the Assistant Administrator for External Affairs, states the importance of media (press) releases to maximize deterrence, and describes the timing and content of media releases allowed in criminal cases.

Requests for Parallel Proceedings

This policy establishes procedures within the criminal and civil sides of OECM for expeditious handling of regional referrals which present parallel proceeding issues.

Criminal Cases and Injunctive Relief

This policy provides for direct regional responsibility - a far more workable alternative than OECM review - to evaluate criminal referrals and determine whether immediate civil relief may be needed.

IV. MAJOR ENFORCEMENT LITIGATION AND ESTABLISHING KEY LEGAL PRECEDENTS

Each enforcement action, be it administrative, civil or criminal judicial is important in bringing a violator back to compliance, deterring future violations by that source or others and establishing useful legal precedent. Following are highlights from key cases which go beyond simple success in an individual action. Examples are selected from each media program.

Air (Stationary) Litigation

U.S. v. Ford Motor Co.: The Sixth Circuit held that the U.S. can enforce the current federally-approved State Implementation Plan (SIP) even though the defendant and the State of Michigan had entered a consent judgment in State court invalidating the SIP regulation. The court held that the State could only revise its SIP by submitting a revision to EPA for approval. The court distinguished this case from previous cases which recognized a State court invalidation of SIP regulations ab initio based on procedural deficiencies in adoption of the regulations. The Sixth Circuit also ruled that federal enforcement of the current SIP regulation could proceed

despite the pendency of a SIP revision proposed by the State. This case was subsequently settled for $1.75 million and resulted in the elimination of approximately 800 tons of VOC annually. (Region V)

U.S. v. Wheeling-Pittsburgh Steel Corp.: The Third Circuit ruled that federal enforcement of an existing SIP could proceed despite the pendency of a SIP revision. In this case, the district court had ordered a modification to a consent decree based on a "bubble" proposal which the State had not formally submitted to EPA. The court ruled that the district court erred and held that the company was not relieved of its obligations to comply with existing SIP requirements. (Region III)

U.S. v. SCM Corp.: The court in this case assessed $350,000 in civil penalties against SCM Corporation for violations of SIP particulate matter and acid mist regulations. Among other things, the court ruled that penalties may be assessed beginning with the earliest provable date of violation, even prior to EPA's issuance of a Notice of Violation, subject to a five year statute of limitations. (Region III)

U.S. v. Magma Copper Company: A successful civil action was brought by EPA against the second largest sulfur dioxide (SO_2) source in Region IX. (The largest SO_2 source, the Phelps Dodge Douglas Reduction Works in Douglas, Arizona, shut down on January 15, 1987 due in part to a Region IX civil action.) A consent decree entered in Federal District Court in Tucson between the United States and Magma Copper Company requires Magma to bring their primary copper smelter into full compliance with Arizona emission limitations by November, 1988, by upgrading the smelting furnaces and air pollution control equipment. The consent decree requires Magma to adhere to a strict construction schedule for installation of new equipment, to post a $20 million letter-of-credit to insure shutdown of the existing smelting furnaces, to meet the SO_2 NAAQS, and to limit short term peak SO_2 concentration limits to protect asthmatics. The consent decree also contains stiff stipulated penalties and requires Magma to pay a civil penalty of $600,000.

U.S. v. Borden, Inc.: In an action to enforce a consent decree requiring installation of air pollution control equipment, the District Court awarded EPA $550,000 in stipulated penalties. The court agreed with EPA that Borden had failed to properly install and operate equipment for the control of volatile organic compounds, and to apply for a State operating permit, as required by the decree. (Region II)

U.S. v. General Motors: On August 17, 1987, Region I filed a complaint under the Clean Air Act against General Motors in Framingham, Massachusetts, to collect $13 million in penalties for a 20-month period during which GM operated in violation of the federally-approved Massachusetts ozone State Implementation Plan (SIP). This case is a central piece of a larger Region I initiative to address violations by sources emitting volatile organic compounds (VOCs) which are ozone precursors. The initiative also included issuance of the Region's first Notices of Noncompliance under Section 120 on December 19, 1986, to Archer Rubber Company and on December 30, 1986, to Haarz-Mason Company; and entry on January 16, 1987, of a consent decree with National Gypsum collecting the largest Clean Air Act penalty to date in the Region.

Vinyl Chloride Cases: The Agency settled several civil actions for violations of the National Emission Standard for Vinyl Chloride, a hazardous air pollutant. The settlements typically require operator training, detailed operation and maintenance procedures, and where necessary, payment of substantial civil penalties. The settlement penalty amounts were: Occidental Chemical Corp. (NJ), $490,000; B.F. Goodrich Co. (LA), $395,000; Goodrich - Louisville (KY), $333,500; PPG Industries (LA), $225,000; Union Carbide Corp. (TX), $142,000; Goodrich - Calvert City (KY), $123,500; Dow Chemical Co. (TX), $105,000; Dow (LA), $87,400; and Occidental (LA), $75,000.

The City of Indianapolis, Indiana entered into a Consent Decree with the United States Environmental Protection Agency (U.S. EPA), Region V to remedy air pollution violations from eight sewage sludge incinerators at its Municipal Waste Water Treatment facility. These sewage sludge incinerators emitted particulate matter in excess of the rate allowed under the Indiana State Implementation Plan (SIP). Indianapolis agreed to install new high-energy venturi scrubbers on each of the incinerators at a total cost of approximately $4.5 million and pay a civil penalty of $75,000. Currently, four scrubbers have been installed and have demonstrated compliance with the Indiana SIP. (Region V)

Air (Mobile) Enforcement

U.S. v. Nobek Distributors, Inc.: This gasoline distributor was issued an NOV in 1984 for the distribution of contaminated gasoline. The proposed penalty was $16,100. When settlement

discussions failed, an action was brought in federal district court. On June 30, 1987, a judgement was issued against the company on a motion for summary judgment for the full statutory penalty of $180,000.

Mac's Muffler: EPA initiated an enforcement action for the removal of emission control devices by a repair facility. After trial, the court found the facility, and the owner, liable and assessed $21,000 in penalties.

Ceds, Inc.: A $75,000 settlement was reached with the largest manufacturer of catalytic converter replacement pipes. The manufacturer is also prohibited from any further marketing of the devices. EPA worked with the state of Indiana to resolve this and related cases against parts distributors who sold the devices and repair facilities who installed them on vehicles. The state cases also involved a large number of catalyst replacements as a condition of settlement and the collection of substantial penalties against the distributors, installers and Ceds, as well.

Geo-Plex Corporation: EPA investigated this manufacturer of aftermarket catalysts and determined that the devices did not perform the essential function of a catalytic converter. The court granted EPA's request for an injunction preventing further marketing of the device, and ordered the company to notify each purchaser that installation of the device could result in tampering liability. EPA's actions in this case received excellent trade press coverage and conveyed a strong message to this industry of the Agency's intent to firmly enforce these requirements.

Will Petroleum, et al.: An extensive EPA investigation led to the issuance of an $11 million NOV to this company based on an alleged scheme to profit from illegal leaded gasoline blending. Three other companies were also implicated and received NOVs for similar penalties. These cases have not yet been resolved. The announcement of these actions prompted other companies to initiate their own internal audits for compliance with these regulations.

Good Hope Refinery: An action was filed against this company seeking $18 million in penalties for lead phasedown violations. The company filed for chapter 11 bankruptcy. EPA resolved the case via a court approved restructuring plan. EPA accepted a $2.3 million cash-out settlement over another option that would have amounted to approximately $10 million in eight years.

Canal Refining Co.: EPA negotiated a $710,000 settlement in a lead phasedown case in which an NOV had been issued proposing a $740,000 penalty.

Water (CWA & SDWA) Litigation

The CWA enforcement program recorded a significant improvement over previous years in concluded cases and civil penalty assessments. The Federal program concluded 74 civil cases in FY 1987, the highest number since 1977, and received judgments for $6,602,587 in civil penalties, the highest amount ever.

Region I initiated use of EPA's new Clean Water Act administrative penalty authority by issuing one of the first administrative penalty orders in the nation. In a Class I proposed penalty order, the Town of Biddeford, Maine, a penalty of $25,000 was proposed to be assessed for failure to implement a pretreatment program. In a Class II proposed penalty order, the Dartmouth Woolen Company of New Hampshire a $125,000 penalty was proposed for continuous failure to submit discharge monitoring reports and other data. Five days later, on September 23, the Regional Administrator, Region VI, proposed the entry of Class I penalties against 10 respondents for various alleged NPDES program violations.

U.S. v. Joint Meeting, Rutherford, East Rutherford and Carlstadt, NJ: An amended consent decree was lodged with the court resolving the above-captioned case. In this action, municipal defendants have been assessed a civil penalty of $50,000, pursuant to Section 309(d) of the Clean Water Act, for their violations of their NPDES permit. The defendants also violated a previously entered partial consent decree embodying interim effluent limits and a compliance schedule. For their violation of the previous consent decree, defendants are assessed an additional $350,000, based upon the stipulated penalties provided in the original decree. Of this $350,000, $100,000 is payable in cash, with the balance suspended pending defendants' final compliance with the amended decree's requirement to "cease discharging" by December 31, 1987. (Region II)

U.S. v. General Development Utilities: This case involved two Florida facilities operated by General Development Utilities which were originally intended to be no discharge systems. Due to insufficient design capacity, increasing flows, and operations changes, both facilities had unpermitted discharges.

As a result of extensive pre-filing negotiations a consent decree was signed with a $487,000 upfront penalty and schedules (with stipulated penalties) for the construction of a multi-million dollar facility at each location to cease discharge. These included spray irrigation at the Silver Springs Shores site and spray irrigation and deep well injection at the North Port site. An extremely important factor in the negotiations involved EPA's presentations of calculations per the penalty of $100,000 was their maximum based on their perception of other settlements that they were aware of. Firm insistence on obtaining more than the economic benefit of non-compliance, under the EPA Civil Penalty Policy, was successful in bringing about agreement on the much larger penalty. Another unusual aspect of the case relating to the North Port site was extensive public controversy. By close coordination with local and State officials, agreement was reached with no public objections. (Region IV)

Ashland Exploration Administrative Order: An Administrative Order was negotiated and signed between Ashland Exploration and EPA regarding underground injection activities in the Martha Field of Kentucky. The Order requires Ashland to plug and abandon 600 injection wells, 1200 production wells, provide alternate water supplies to replace contaminated private wells and to clean up the areas around the oil-brine separators. In addition, Ashland has paid a penalty of $125,000, the maximum allowable under the Safe Drinking Water Act. The Order was finalized in September of 1987. (Region IV)

Region IX referred its first civil suit of a Public Water Supply System under the SDWA in March, 1987. This case, if decided in favor of EPA, will have precedential value of national significance in defining a Public Water Supply System under the act. The defendant in this case is one of perhaps several dozen systems in California serving raw or partially treated irrigation water to hundreds of residences. As this case unfolds, the Region will prepare a strategy including administrative orders and further lawsuits to bring these systems into compliance with the act.

Hazardous (RCRA & CERCLA) Waste Litigation

Multi-Party Settlements: Probably the most significant accomplishments in the Superfund area during the past fiscal year were the several multi-party settlements achieved. A few

merit special note. Under the judicial settlement in the Beacon Heights (Connecticut) case, 32 generators will undertake remedial action at the site that is projected to cost more than $20,000,000 and will pay EPA's oversight costs in excess of the first $500,000. In the Cannons case, the first multi-party de minimis cash-out settlement in the country was reached; 267 parties combined to contribute $10,900,000 toward the cleanup of the four Cannons sites in New Hampshire and Massachusetts. The negotiations in the Union Chemical (Maine) case culminated in the first administrative cost recovery settlement in the country. Two hundred sixty-three parties have agreed to pay 80 percent of EPA's and the State of Maine's past costs at the site, for a total of $1,649,600, and to conduct the RI/FS for the site. In the settlement concerning the McKin (Maine) site, more than 200 parties have signed on to complete the necessary remedial action by designing and constructing a groundwater treatment system, pay past and future costs to the U.S. in the amount of $1,850,000, and pay past and future costs to the State of Maine in the amount of $1,150,000. (Region I)

A consent decree between the United States and General Motors, governing remedial work at the Harvey and Knotts Site, was filed in the United States District Court for the District of Delaware on August 28, 1987. General Motors agreed to perform the remedial action, pay $979,688 toward EPA's past response costs, and pay two-thirds of EPA's future oversight costs. Pursuant to the terms of the decree, EPA will reimburse General Motors for one-third of the cost of the remedial action. This is the first judicially-approved mixed funding consent decree in the nation. (Region III)

Maxey Flats Site: On March 24, 1987, Region IV signed an Administrative Order by Consent with 75 of the 832 potentially responsible parties (PRPs) at the Maxey Flats Nuclear Disposal Site in Fleming County, Kentucky. The Maxey Flat site was the second if six commercial radioactive disposal sites commissioned in the United States. The site, which was active from 1963 to 1977, had been included on Superfund's National Priorities List in October 1986. The order requires the PRPs to complete a remedial investigation and feasibility study by July 1988. The cost of the investigation and study has been estimated to be in excess of $1.3 million. The order requires the PRPs to refund EPA's oversight costs. (Region IV)

During FY 1987, the first judicial interpretation of SARA's broadened access authority was obtained in U.S. v. Long in an order granting EPA access to the Pristine NPL site. In the Bofors-Nobel case, a settlement was achieved with a potential purchaser of the site obtaining $15 million for cleanup of this highly contaminated Michigan facility. This agreement, is now serving as the principal model for the development of national guidance on potential purchaser settlements. (Region V)

Perhaps one of the most significant interlocutory rulings achieved in FY 1987 was in the Seymour Recycling case. A judicial opinion was achieved in that action clearly confirming that judicial review of EPA's selected remedy would be "on the record" rather than at a full trial. Such review is very favorable to EPA, both in terms of our burden of proof and the resources required. This was the first judicial opinion upholding "record review" under SARA, and narrowly limited a very unfavorable opinion in Ottati and Goss case to its somewhat unique procedural circumstances.

In Laskin, the Sixth Circuit Court of Appeals granted EPA's mandamus petition, holding that the reference of dispositive motions to a special master was not authorized by the Federal Rules of Civil Procedure. The opinion set national precedent concerning the appointment of special masters, a circumstance arising in an increasing number of environmental cases.

A district court order denying the defendant's motion to dismiss our Conservation Chemical Corporation of Indiana (CCCI) RCRA case provides precedent clearly upholding U.S. EPA authority to enforce RCRA in States that have authorized RCRA programs. The argument that EPA lacks such authority has clouded RCRA enforcement nationwide since Administrative Law Judge Yost adopted it in his unfavorable CID decision early in the year.

Several of the administrative orders issued set national precedents for implementation of new SARA provisions. The Elyria/Republic order was the first in the nation to exercise new SARA authority to administratively order access or face penalties. The Rasmussen order was the first to exercise new administrative subpoena authority under SARA. The ICAAP order was the first ever issued under new §120 of SARA addressing federal agencies. This $50 million remedial action agreement

broke an impasse that had arisen between federal agencies and EPA, and is currently serving as a national model for our federal facility negotiations.

U.S. v. Conservation Chemical Company et al. In FY 1987, the parties to this case reached agreement on the terms of a settlement and a Consent Decree has been lodged with the United States District Court for the Western District of Missouri. This settlement resolves one of EPA's longest running, most hotly contested hazardous waste cases. The Conservation Chemical Company site, a former treatment, storage and disposal facility, which operated from approximately 1960 to 1980, is one of the original sites addressed by the pre-CERCLA uncontrolled hazardous waste site program. Initial site investigation was conducted beginning March 1979. In September, 1980, the first of two lawsuits regarding the site was filed in Federal District court for the Western District of Missouri under Section 7003 of RCRA. In November 1982, the United States filed its second suit involving this site, under Sections 106 and 108 of CERCLA and Section 7003 of RCRA, seeking to obtain responsible party cleanup of the site. The suit named not only the site owner/operators but also the parties believed to be the principal generators of the hazardous wastes/hazardous substances of concern at the site. In 1984, these companies sued approximately 250 additional parties, including 16 insurance companies and 10 Federal agencies and departments, for contribution or indemnification. In May 1985, on the eve of trial, an agreement was reached which called for partial reimbursement of past response costs and initiation of implementation of the remedy by the defendants. The defendants agreed to complete all remedial design and construction work, operate the treatment system and undertake all operation and maintenance activities required to keep the pump and treat system functioning properly. In addition, the generator defendants will pay response costs. The CCC defendants, through their insurers, will pay past response costs of $1,600,000. This case is one of the most often cited cases in favor of the Government, since it has resulted in the establishment of a number of favorable legal precedents, relating to constitutional issues, as well as questions of liability and the meaning of "imminent and substantial endangerment." This case was one of the first cost recovery cases to have the Government's cost accounting techniques exposed to the scrutiny of extensive discovery, which in turn lead to the adoption of improved cost accounting procedures. This case

was also one of the first to make extensive use of computerized data bases for litigation support. Computerized document control and transactions analysis currently in use by EPA are largely the offspring of similar systems first developed for CCC. (Region VII)

Bunker Hill: Bunker Hill, a Superfund site since 1983, is one of the largest Superfund sites in the region. Over 5,000 people live in the vicinity of the site. When Gulf Resources and Chemical Corporation was still running the Bunker Hill site, negotiations between the company and EPA proceeded at an excrutiatingly slow pace. In FY 1987, EPA and Gulf Resources signed a consent order initiating a Remedial Investigation/ Feasibility Study (RI/FS) at the site. The RI/FS, one of the largest being conducted nationally, is being funded by Gulf Resources. The RI/FS is expected to cost between $5-6 million. This is quite possibly the largest settlement with a single party for an RI/FS, representing a sizeable cost savings to the government. (Region X)

Region I has been one of the national leaders in addressing the serious problems resulting from lead contaminated soil. The Region has embarked in a major project in the City of Boston. The Region was granted over $6 million to abate lead contaminated soil in Boston's inner city neighborhoods. The project is intended to be a pilot program which demonstrates the positive effects of removing contaminated soil from children's environments. In addition, the Region began efforts to require owners of lead contaminated properties to undertake cleanup efforts under Section 7003 of RCRA. During FY 1987, a landmark agreement was reached with the City of Boston under which the City will cleanup 25 contaminated properties which it owns.

Lancaster Metals and Fulton Financial Realty Co.: In this case, Region III issued its first enforcement action for violation of RCRA's financial assurance requirements to provide proof of a bond and liability insurance.

In Region VI, as a result of a three week multi-media inspection which included participation by the Groundwater Task Force, a civil action was filed in federal court against Cecos/BFI in Livingston, Louisiana. A penalty in the amount of $70,000,000 is being sought. The filing of this action followed six weeks of intense negotiations between the company, the Department of Justice and the EPA. An agreement could not be reached; therefore, the civil action was initiated.

Pesticides and Toxics Litigation

In one noteable action, EPA filed a Motion To Show Cause in the District Court of Alaska to require the Alyeska Pipeline Service Company to comply with an investigative subpoena issued to Alyeska in response to allegations that they were mis-handling chemical substances or waste materials. In December, 1987, Chief Judge Fitzgerald; of the District Court of Alaska, issued a written opinion upholding the Agency's authority to use TSCA subpoenas to conduct investigations. The decision in United States v. Alyeska Pipeline Service Company is the first written decision of any court concerning EPA's TSCA subpoena authority. This decision is currently on appeal to the Ninth Circuit Court of Appeals.

American Telephone & Telegraph Company: This action was brought seeking civil penalties for the illegal production and use of two chemical substances that the American Telephone and Telegraph Company (AT&T) had manufactured without listing the chemicals with the TSCA Chemical Substances Inventory, as required by Section 5 of TSCA. A civil penalty of $2.65 million was sought in the complaint. Although AT&T voluntarily disclosed the violations to EPA, the EPA viewed these violations as serious because the Agency was precluded from conducting required premanufacture safety review of the chemicals before the substances were manufactured and distributed in commerce. In settlement, AT&T agreed to pay a civil penalty of $1.0 million and to implement a number of specific types of compliance activities, including: corporate-wide employee education concerning TSCA requirements, payment of all costs for a number of public service announcements about TSCA requirements applicable to the electronics and semiconductor industry, and the initiation and completion of a comprehensive TSCA compliance survey audit at all AT&T domestic facilities. The compliance survey which began in July, 1987, will assess compliance with Sections 5, 8(a), 8(c), 8(d), 12 and 13 of TSCA. EPA retained the authority to initiate criminal enforcement actions or actions to abate situations involving imminent hazards during the term of the compliance survey. For violations discovered by AT&T as the result of the audit, AT&T agreed to pay as a stipulated penalty the sum of 10,000 for each chemical or chemical substance found to be in violation of any or all of TSCA Sections 5 8(a), 8(c), 8(d), 12 or 13, unless EPA determines that the chemical or chemical substances presents an unreasonable risk to health or the environment.

For chemicals identified in the survey and found by EPA to represent an unreasonable risk, EPA reserved the right to seek penalties of up to $1.0 million per chemical substance. The $1.0 million civil penalty is the largest penalty paid to date for PMN violations.

Canon U.S.A., Incorporated: Canon U.S.A. of Lake Success, New York, the American subsidiary of the Japanese Canon Corporation, was charged in this administrative complaint with violations arose in connection with the manufacture and import into the United States of two photocopier toners containing chemical substances not listed on the TSCA inventory. The complaint sought civil penalty of $1.6 million. Canon voluntarily disclosed the violations to EPA upon their discovery. The consent agreement negotiated in the Canon case requires the payment of a civil penalty of $400,000 and the initiation and satisfactory completion of a number of items of specific performance, including: development and implementation of a training program on United States TSCA requirements for Canon personnel in both Japan and the United States, translation of EPA TSCA requirements, regulations and guidance documents into the Japanese language and presentation of a comprehensive seminar on American TSCA requirements for Japanese businesses involved in the export of chemicals to the United States. This seminar was held in Tokyo, Japan in the spring of 1987 and included the participation of several representatives of EPA's Office of Pesticides and Toxic Substances.

Delonghi America, Inc.: This action concerns the illegal import, sale and distribution in commerce of oil-filled portable electric space heaters from Italy by Delonghi. The violation was initially discovered by Environment Canada. EPA tests confirmed that several shipments of heaters contained high levels of oil contaminated with PCBs. Import of PCBs or PCB Items were banned in 1978. Since these heaters were sold in commerce of the United States to consumers for home use, EPA considered the violations to be serious. Delonghi has subsequently terminated all import and distribution of PCB contaminated heaters. EPA issued a civil penalty of $1,507,000 for the violations.

Mitsubishi International Corporation: This Complaint charged Mitsubishi International with the illegal import of a chemical substance on nine separate occasions prior to the submission

of a Premanufacture Notice (PMN), as required by TSCA §5, and of violation of the U.S. Customs Service regulations promulgated pursuant to TSCA §13. An adjusted gravity based penalty of $280,000 was proposed. In settlement of this action, Mitsubishi agreed to pay a civil penalty of $98,000 and to return 31,000 pounds of the unregistered chemical to Japan.

BASF Corporation and BASF Inmont Division: The Agency issued an administrative civil complaint against BASF Corporation and one of its divisions, Inmont, seeking a civil penalty of $4.3 million for violation of the TSCA Sections 5 and 13 requirements when it imported seven chemical substances into the United States without completing the Premanufacture Notice requirements of TSCA and for false certification of U.S. Customs Service import certifications. Manufacturers or importers are required to notify the Agency of their intent to manufacture or import new chemicals so the Agency can evaluate any hazards posed by the chemicals before they are manufactured or brought into the United States. This was the sixth civil complaint filed against BASF or its subsidiaries for violations of TSCA and the proposed penalty included an increased civil penalty for prior TSCA violations, in conformance with the Agency's TSCA Civil Penalty Policy, 45 FR 59770, September 10, 1980. This penalty was the largest ever sought under TSCA for violations other than PCBs. EPA is barred from disclosing which chemicals or chemical substances are involved, the amounts produced or actual uses. Under TSCA such information is considered confidential business information. On April 19, 1988, the case was settled in which BASF has agreed to pay a $1.3 million penalty and establish a comprehensive TSCA training program for its employees both in this country and its parent company's headquarters in West Germany. BASF is also required to encourage TSCA compliance by advertising in national trade publications and conducting TSCA seminars, and it must perform an extensive TSCA compliance audit at 151 of its facilities. This is the largest penalty ever for illegally importing and processing PMN chemical substances.

Union Carbide: A Consent Agreement and Final Order was signed on July 1, 1987, in the Union Carbide TSCA Section 8(e) enforcement case. The initial complaint was issued in March 1985 for $3.9 million. This settlement sets a penalty of $80,000 and calls for Union Carbide to conduct a comprehensive review of its potential TSCA substantial risk information acquired since 1977. This case represented the first 8(e) case issued by the Agency.

Gonzaga University in Spokane, Washington: EPA's first inspection of Gonzaga University revealed the presence of six, large transformers which were leaking. EPA assessed a final penalty of $29,325, but settled for a cash penalty of about 10% in exchange for a unique and unusually ambitious program of early disposal and other activities whose value far exceeded the penalty. First, Gonzaga disposed of the six transformers and replaced them with non-PCB transformers. Then, Gonzaga developed an outreach program to identify all PCB Transformers in the metropolitan Spokane area. By working with the Washington Water Power Authority and the Spokane Fire Department, the outreach program contacted the owners of known and potential PCB Regulations. In particular, the University worked with the Spokane Fire Department to develop a PCB Transformer registration program to insure that all the PCB Transformers which had been identified were also registered with the Fire Department. The value in the increased awareness of PCBs in the Spokane area should go well beyond the amount of penalty which was mitigated.

Pacific Power and Light Co. of Portland, Oregon: In a first-of-a-kind Consent Agreement, EPA has agreed to forgive a $66,000 assessed penalty exchange for cleanup of a site. In six separate transactions, Pacific Power and Light Co. sold discarded, undrained electrical equipment to Portable Equipment Salvage. The equipment, which had not been tested for PCBs, was drained at Portable Equipment Salvage and the liquid was either resold, drained onto the ground or burned in an on-site incinerator not approved by EPA. The unique feature of this agreement is that clean-up of the entire site will be accomplished by Pacific Power pursuant to the Superfund Amendments and Reauthorization Act (SARA) regardless of the involvement of other potentially responsible parties who may have contributed to improper disposal at the site. Pacific Power will perform stabilization and a Remedial Investigation and Feasibility Study, and will then implement all such actions as EPA deems necessary. Other potentially responsible parties will be encouraged to participate in the cleanup, but it will be accomplished with or without their participation. However, if Pacific Power does not complete the requirements of the Consent Agreement, it will be required to pay the $66,000 penalty. (Region X)

Criminal Litigation

Robert E. Derecktor: In this multi-media case, guilty pleas encompassed four EPA statutes (the indictment has charged violation of six EPA statutes); in addition to substantial fines, the sentence includes the requirement that the president certify monthly to the probation department for five years that his corporation has not violated any environmental law.

USM: The first EPA case to criminally convict (by guilty plea) for violations of CWA pretreatment requirements; the fine of $1,025,000 was the largest since the 1976 kepone case against Allied Chemical Corporation.

Harwell and Baggett: In this case (involving unlawful transportation, storage and disposal in violation of RCRA), two individuals pled guilty and were sentenced; one received three years of incarceration, the highest prison term yet in an EPA case; the other, a former employee of a state environmental protection division, received 1 1/2 years.

Edmund Woods: The first EPA case to criminally convict (by guilty pleas) for falsehood arising out of the UIC requirements of the SDWA.

Mercier and McLeod: The first EPA case to criminally convict (by guilty pleas) for violations of CAA lead phase-down requirements.

Custom Engineering: The testing laboratory and its president pled guilty and were sentenced; this is another in a series of CAA criminal cases involving falsification to meet automobile emissions standards.

Marine Power: The dry dock company and its officers pled guilty and were sentenced; this is one of three CWA criminal cases involving discharge of ship-repair wastes, and is notable in part because the investigation included the use of SCUBA divers.

Assisted and joint investigations -

Jack E. White - a major, joint investigation involving milk and cattle contaminated by a restricted pesticide; White was convicted at the conclusion of a two-week jury trial of counts

under Title 18, FDCA, and CWA (for discharge of pesticide-contaminated wastewaters), and he was sentenced to three years of incarceration.

In a case with international ramifications which is pending sentencing, as a result of a joint investigation the second convictions (by guilty pleas) were obtained for the export of hazardous wastes for unlawful disposal (the first was the Colbert brothers case for shipment to Africa; in this case the wastes were shipped to Mexico).

In another case with international ramifications which has not yet been tried, as a result of a major, joint investigation into the ocean dumping of hazardous wastes, twenty-one defendants (including a foreign company and many of its ship captains) were indicted in this first case to enforce MPRSA.

V. MEDIA SPECIFIC ENFORCEMENT PERFORMANCE; SUCCESSFUL RESOLUTION OF SIGNIFICANT VIOLATORS

In Fiscal Year 1987, the Agency maintained high levels of enforcement actions in specific media programs, as well as on the national level. Also, starting in FY 1984, each program defined within some broad criteria what it considers to be its most important violations to receive highest priority in enforcement actions. These are called "significant noncompliers or significant violators."

Air Enforcement Activity

EPA has maintained a strong Federal enforcement program directed at violations of State Implementation Plan requirements (SIPs), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs). The Agency has also increased its emphasis in the last year on enforcement of Prevention of Significant Deterioration (PSD) and nonattainment new source review (NSR) requirements.

The initiation of stationary source civil cases was down slightly from the record level of 112 cases initiated in FY 1986 to 98 in FY 1987. The decline of about 15% may be attributable to some extent to an adverse court decision affecting enforcement of SIPs where SIP revisions are pending. However, the air program issued the highest number of administrative orders (191) within the last five years.

Based on initial penalty data which is currently being assembled, the median Stationary Air judicial penalty increased 65% from FY 1986 to $62,000 in FY 1987. The percentage of Air cases which involved a penalty was maintained at 96% in FY 1986 and 1987.

The Mobile Source program has achieved significant increases in penalty sizes in FY 1986 and 1987. The program doubled its yearly penalty total from $2.3 million in FY 1986 to $4.6 in FY 1987, principally due to the fact that the average penalty increased from $5,500 to $13,100.

Progress in Returning Significant Air Violators to Compliance

In FY 1987, EPA and the States made progress in returning significant air violators to compliance. At the beginning of the year, EPA/States identified 637 significant air violators including 160 with enforcement action initiated. At the end of the year, 490 significant violators had been addressed by returning 247 placing 108 on acceptable compliance schedules, leaving a total of 147 to be addressed next year (see page). During FY 1986, EPA/States identified 472 new significant violators. In responding to these new violators, EPA returned 89 to compliance and placed 41 on acceptable compliance schedules.

In comparing the air enforcement efforts in FY 1987 to previous years, good performance has been maintained as detailed in the chart below:

	FY 1985	FY 1986	FY 1987
BOY SVs	513	647	637
Total Addressed at EOY	391 (76%)	509 (79%)	490 (77%)
Returned to Compliance	187 (36%)	241 (37%)	247 (39%)
Initial Enforcement Action Taken	109 (21%)	148 (23%)	135 (21%)
Placed on Acceptable Schedule	95 (19%)	120 (19%)	108 (17%)
Pending	122 (24%)	138 (21%)	147 (23%)

EPA and the States identified 586 new significant violators in FY 1987 compared to 472 in FY 1986. Of the 586 new significant noncompliers 399 (68%) remain unaddressed as compared to 342 (72%) for FY 1986.

Water Enforcement Activity

CLEAN WATER ACT - NPDES

The decrease in the referral of Clean Water Act cases to the Department of Justice from FY 1986 to FY 1987 reflects a decrease in pretreatment referrals against industrial users (four in FY 1987 and 29 in FY 1986). The Agency continued its emphasis on municipalities that need construction to meet the July 1988 deadline under the National Municipal Policy. To support this effort EPA had 33 referrals in FY 1987 compared with 23 in the previous year. Administrative orders issued by EPA remained essential; the same as last year.

Judicial penalties continued to increase in FY 1987; based on initial figures, the total amount of penalties imposed in 1987 was nearly $6.8 million, up from 30% from the FY 1986 total of $5.2 million. The medial penalty for all cases also increased from $37,500 in FY 1986 to over $50,000 in FY 1987.

With the new CWA amendments EPA was given the authority to administratively assess penalties against violations of water pollution requirements. In some circumstances, an administrative order with penalties may be a more appropriate enforcement tool than a civil referral. The Regions will be using this new enforcement tool in place of the traditional civil referral to address many kinds of violations in the future.

In addition, the Regions have been providing additional legal and technical support to a growing on-going case docket. Supporting on-going litigation has required resources to be redirected from development of new cases.

SAFE DRINKING WATER ACT

EPA's Safe Drinking Water program was given a new enforcement tool this year -- authority under the Safe Drinking Water Act to issue administrative orders, with penalties if appropriate, rather than having to work solely through the courts. Under the amended SDWA, EPA proposed 123 and issued 61

final administrative orders for the Public Water System program. The Underground Injection Control program proposed 89 administrative orders and issued 18 final orders in FY 1987. Because of its use of the new administrative authority, the SDWA program referred seven cases in FY 1987, compared with 11 cases in FY 1986.

Water - Response to Significant Noncompliance (SNC) - Exceptions Report

At the beginning of FY 1986, the NPDES program implemented Quarterly Noncompliance Report regulations and modified its definition of SNC to promote greater consistency in noncompliance reporting and to clarify quantifiable and qualitative violations. This major change involved how to report permit effluent violations, as well as a stronger emphasis on violations of reporting requirements and violations of formal enforcement orders.

Unlike the other Agency enforcement programs, the NPDES program no longer tracks SNC against a "fixed base" of SNC that is established at the beginning of the year. Instead, it uses the Exceptions List to track instances of SNC as they are reported throughout the fiscal year. The exceptions report identifies those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action.

During FY 1987, there were 494 new permittees reported on the Exceptions List (those in SNC two quarters), 230 formal enforcement actions taken and 299 facilities returned to compliance. Overall, of the total facilities appearing in SNC on the QNCR for the first time during FY 1987, an average of 76 percent were resolved (i.e., either returned to compliance or addressed by formal enforcement action) prior to appearing on the Exceptions List the subsequent quarter. The number of facilities in SNC for four or more quarters decreased during FY 1987 from 70 1st Quarter to 57 by 4th Quarter.

Superfund and RCRA Enforcement Activity

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT

Reauthorization of CERCLA in late FY 1986 reinstituted funding for the Superfund program and provided strong enforcement and settlement provisions in the statute. The Agency increased its administrative and judicial enforcement activity under Sections 106 and Section 107 SARA. There was an increase in the number of judicial referrals to DOJ, 54 in FY 1987 from 41 in FY 1986. In addition, there were administrative orders or consent decrees with PRPs for 64 RI/FS (including 14 take-overs by PRPs from Fund initiated actions), 57 removal actions and 19 remedial responses. These agreements require actions by PRPs with a value close to $200 million. The value of RD/RA settlements was in excess of $110 million. The Agency achieved 43 cost recovery settlements with PRPs with a total value of almost $36 million. The cost recovery program referred 49 cases to headquarters with a combined value of more than $82 million.

RESOURCE CONSERVATION AND RECOVERY ACT

Fiscal Year 1987 also marked continued prosecution of the many civil judicial cases filed last year as part of the "Loss of Interim Status" initiative.

The Hazardous and Solid Waste Amendments of 1984 required, among other things, that land disposal facilities for which owners and operators did not (1) certify compliance with groundwater monitoring and financial responsibility requirements and (2) submit a final (Part B) permit application would lose interim status on November 8, 1985. This loss of interim status (LOIS) provision requires that all noncomplying land disposal facilities be closed.

The Agency's response to the LOIS violations that are potentially the most harmful to the environment -- the continued operation of facilities lacking adequate groundwater monitoring, insurance or closure resources -- has been comprehensive. Enforcement actions have been taken to address 97% of these violations, and the prosecution of these actions remained a high priority for the Agency in 1987.

Under RCRA, the Agency referred 23 judicial cases to DOJ in FY 1987 compared to 43 cases referred in FY 1986. The large majority of the cases referred last year, FY 1986, were part of the one-time LOIS initiative. The 1987 numbers reflect the changing nature of the LOIS initiative from referral of cases to litigation and settlement of these cases. Seven of these filed cases have been settled.

At this time, EPA does not anticipate that many additional LOIS violations will be discovered. The focus of EPA's effort with regard to LOIS in FY 1988 will be to continue litigating the LOIS cases which have been filed, and to monitor the closure of all the facilities that were required to close.

EPA took 243 administrative actions in FY 1987, compared with 235 actions in FY 1986. According to initial calculations, the RCRA program maintained its high level of administrative penalties, and increased the numbers of very large cases.

In addition, RCRA increased its percentage of cases with a penalty to 88% in FY 1986 and 89% in FY 1987.

RCRA - Progress on Addressing Land Disposal Facilities in Significant Noncompliance

The RCRA program considers a significant noncomplier as a land disposal facility with one or more Class I violations of regulatory or statutory requirements related to groundwater, closure, post-closure, or financial responsibility.

In FY 1987, EPA and the States increased their efforts to address significant noncompliance over the levels achieved in the previous year.

	FY 1986	FY 1987
BOY SNC	792	753
Total Addressed at EOY	772	737
- Returned to Compliance	331 (42%)	165 (22%)
- On Compliance Schedule	219 (28%)	320 (42%)
- Initial Action Taken	222 (28%)	252 (33%)
- Pending	20 (2%)	16 (3%)

TSCA and FIFRA Enforcement Activity

TOXIC SUBSTANCES CONTROL ACT/FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

The number of administrative enforcement actions rose for both the toxic substances (TSCA) and pesticides (FIFRA) programs. Penalties collected this past year were the highest ever obtained under the TSCA premanufacturing notice program. In addition, five civil judicial actions were referred under FIFRA and eight actions were referred under TSCA during the fiscal year. Most judicial actions are for collection of penalties previously assessed through administrative orders. One TSCA case (Noble Oil) was significant in that it represented enforcement of an administrative order issued in the first TSCA enforcement case to be appealed to the U.S. Supreme Court. The Agency also obtained, in the first reported decision on the subject, a favorable decision in U.S. District Court upholding its right to require information under a TSCA investigative subpoena.

Response to TSCA Significant Noncompliance

In the TSCA program, significant noncompliance is defined as PCB disposal, manufacturing, processing, distribution, storage, record-keeping, or marking violations, Asbestos-in-School violations, testing or premanufacturing notification violations, import certificaiton and recordkeeping violations.

In FY 1987, the Regions had a beginning of year inventory of 584 open TSCA SNC cases. By the end of the year, the Regions had closed 520 (89%) cases on the inventory. Sixty-four cases remained on the inventory. During the year, EPA made progress in identifying and initiating actions against new violators. The Regions identified 1,316 new significant violators in FY 1987, compared to 923 in FY 1986. Of the 1,316 new violators, 923 had action taken.

Response to FIFRA Significant Noncompliance

Beginning in FY 1986, FIFRA significant noncompliance was redefined to focus on pesticide misuse violations and to reflect the major role of the States in enforcing these types of violations. EPA Regions and each of their States agreed on significant violation categories, given patterns of use unique to each State. They also established timeframes for investigating and taking enforcement actions against these significant violations.

In FY 1987, the Regions referred to the States a total of 155 significant use violations for investigation and enforcement action. Last year, the Regions referred 274 cases. At the end of the year, of the 155 cases; nine were addressed beyond the timeframe, 23 were pending action within the timeframe and 123 were addressed within the timeframe.

By the end of the year, the Regions had identified 40 significant violator cases for EPA action. Seventeen of the cases were addressed and six of these were closed by the end of the year.

Criminal Enforcement Activity

The Criminal Enforcement program maintained steady progress during FY 1987. EPA Special Agents, building on earlier successes, have begun to investigate matters of greater complexity, and beginning in 1987 in a number of Regions, matters to be investigated criminally were selected by SAICs and RAICs acting in closer consultation with regional personnel. As a result, investigations will be more likely to produce indictments in areas of programmatic priority and thus of greater deterrent value to EPA. During 1988, EPA expects the trend to greater sophistication to continue, so that criminal enforcement will even more directly support EPA media programs.

The historical statistics are as follows:

(Pre-1982 data is omitted.)	1982	1983	1984	1985	1986	1987
Investigations (referrals) to DOJ (does not include investigations jointly with FBI and/or other agencies)	20	26	31	40	41	41
Investigations (referrals) to DOJ resulting in filing of charges	7	13	16	16	40	25
Number of defendants charged (individuals and corporations)	14	34	36	40	98	66
Successful cases prosecuted (resulting in a finding of guilty)	7	12	14	15	26	27
Number of defendants convicted	11	28	26	40	66	58
Number of special agents	0	23	26	34	34	40

Beginning in early 1987, the Agency began keeping more detailed data with which to produce additional statistics of interest, including the following totals:

	1987
Referrals of investigations	
° resulting in a conviction	27
° in which all charges were dismissed or all defendants acquitted	2
Defendants sentenced	
° entities	16
° individuals	48
Total	64
Total amount of fines assessed (before suspension)	$3,622,876
Total months	
° sentenced (before suspension)	1,015.25 months
° of incarceration ordered (after suspension, before parole)	302.5 months